

ZB# 95-61

Albert Rothstein

47-1-51

Incum.

Dec 11, 1995

Use Variance

⑤ 1 and 2 Interpret.

① Copy of Deed - it

② Title Report ✓

③ Fees: 050.00
300.00

④ Photos: 3/19/96.
Notice to Seize 4/1/96.

Public Hearing:

April 22, 1996.

Granted

Interp. No. 1
Single-Family
only
2 family

Refund: 135.50

#95-61- Rothstein, Albert
use of 66 Interp.

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, NY 12550

GENERAL RECEIPT

15383

March 22, 1976

Received of Thomas & Sheri Prince \$ 50 ⁰⁰/₁₀₀

Fifty and 00/100 DOLLARS

For ZBA Application Fee (#95-61)

DISTRIBUTION:

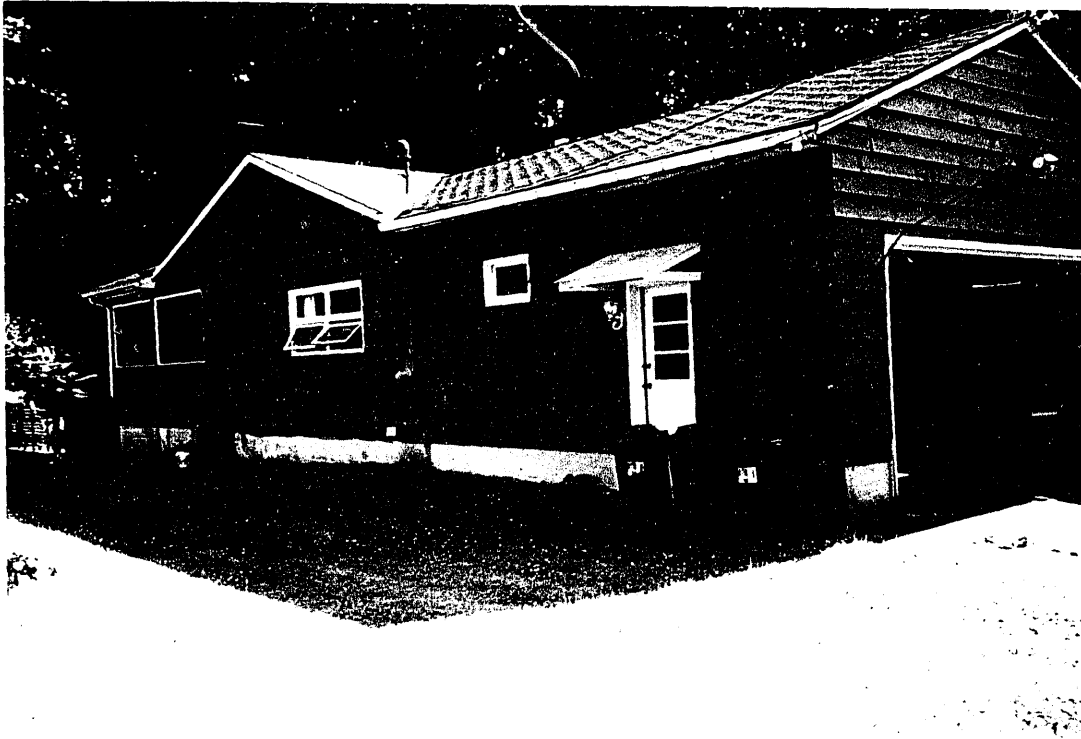
FUND	CODE	AMOUNT
Check # 2851		\$50 ⁰⁰ / ₁₀₀

By Forrest J. Johnson

Town Clerk
Title

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APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Rothstein, AlbertFILE # 95-61RESIDENTIAL: \$ 50.00
INTERPRETATION: \$150.00

COMMERCIAL: \$150.00

AREA ☐USE ☒APPLICATION FOR VARIANCE FEE \$ 50.00 paid

* * * * *

ESCROW DEPOSIT FOR CONSULTANT FEES \$ 300.00 - # 2851

DISBURSEMENTS -

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING - PER PAGE	12/11/95 - 8 pages	\$	<u>36.00</u>
2ND PRELIM. MEETING - PER PAGE	4/22/96 - 13 pages	\$	<u>58.50</u>
3RD PRELIM. MEETING - PER PAGE		\$	
PUBLIC HEARING - PER PAGE		\$	
PUBLIC HEARING (CONT'D) PER PAGE		\$	
TOTAL		\$	<u>94.50</u>

ATTORNEY'S FEES: \$35.00 PER MEETING

PRELIM. MEETING:	12/11/95 - 35.00	\$	<u>35.00</u>
2ND PRELIM.	4/22/96 - 35.00	\$	<u>35.00</u>
3RD PRELIM.		\$	
PUBLIC HEARING		\$	
PUBLIC HEARING		\$	
TOTAL		\$	<u>70.00</u>

MISC. CHARGES:

TOTAL	\$	<u>164.50</u>
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LESS ESCROW DEPOSIT	\$	<u>300.00</u>
(ADDL. CHARGES DUE)	\$	
REFUND DUE TO APPLICANT	\$	<u>135.50</u>

(ZBA DISK#7-012192.FEE)

Date May 1, 1990

TOWN OF NEW WINDSOR

**TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553**

TO Thomas & Shari Franco DR.

14 Garden Drive

New Windsor, N.Y. 12553

[illegible]

THOMAS FRANCO
SHARI FRANCO
PH. 914-562-5107
14 GARDEN DRIVE
NEW WINDSOR, NY 12553

2852

75-148/919
939

PAY TO THE
ORDER OF

Town of New Windsor

\$ *300.00* / 100

Three hundred and 00/100

DOLLARS

To:



HUDSON HERITAGE FEDERAL CREDIT UNION 2219
Newburgh, New York 12550
PAYABLE THROUGH COMMUNITY NATIONAL BANK
NORTHFIELD, MN

FOR

2BA #95-61

Shari A. Franco

⑆091901480⑆9390057510060⑆ 2852

© Clarke American

THOMAS FRANCO
SHARI FRANCO
PH. 914-562-5107
14 GARDEN DRIVE
NEW WINDSOR, NY 12553

2851

75-148/919
939

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\$ *50.00* / 100

fifty and 00/100

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HUDSON HERITAGE FEDERAL CREDIT UNION 2219
Newburgh, New York 12550
PAYABLE THROUGH COMMUNITY NATIONAL BANK
NORTHFIELD, MN

FOR

2BA - #95-61

Shari A. Franco

⑆091901480⑆9390057510060⑆ 2851

© Clarke American

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In the Matter of the Application of

ALBERT ROTHSTEIN AND ELEANORE ROTHSTEIN

MEMORANDUM OF
DECISION GRANTING
INTERPRETATION#95-61.
-----x

WHEREAS, ALBERT and ELEANORE ROTHSTEIN, residing at 14 Garden Drive, New Windsor, New York 12553, have made application before the Zoning Board of Appeals for an interpretation and/or use variance as to whether the existing structure is a two-family residence located at the above residence in an R-4 zone; and

WHEREAS, a public hearing was held on the 22nd day of April, 1996, before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicants were represented by Joseph Rones, Esq. and Jay Klein, AIA; and

WHEREAS, there were nine (9) spectators at the hearing, two spoke in opposition to the application and two in favor; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing which interpreted the residence as a single-family residence; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. The evidence presented by the applicant showed that:

(a) The subject property is a one-family home located in a neighborhood of one-family homes.

(b) The renovations proposed to the home are those that would allow the daughter of the present owners to live there along with her husband and three children.

(c) The health of the present owner makes it necessary for him to have a full-time care giver.

(d) The renovations to the home will not create a separate walled or locked-off living unit and all areas of the home will be freely accessible.

(e) The law of the Town of New Windsor places no limit on the number of related people who may live in a one-family home. All the proposed occupants of this home appear to be related.

7

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The proposed use of this house will not make it a two-family house. It will remain a one-family house as it is presently zoned. Although it is proposed to make renovations to the house to increase the comfort of a larger number of occupants, the renovations which are proposed will not create a separate living unit.

2. The application for a use variance is withdrawn by the applicant.

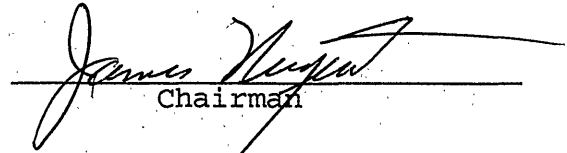
NOW THEREFORE BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor interprets the use of the premises located at 14 Garden Drive in an R-4 zone to be a single-family residence use only, in accordance with the information filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER,

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.

Dated: June 10, 1996.


Chairman

4/22/96 Public Hearing - Rothstein, Eleanor #96-61

Name: Myszelow/Sejdel Address: 72 Garden Drive, N.W.

in Favor Wm Gould 18 Garden Dr N.W.

in Favor Mary Paul 3 Garden Dr. N.W.

Antonia Castenaro 6 Garden Dr N.W.

Florence Gould 18 Garden Dr N.W.

David Rothstein 293 Little BRITAIN Rd TNB

Ray work 32 GARDEN DR N.W.

Opposed Peter Callas 10 Garden Dr
Ernest D. Paeffgen 13 Garden Drive

H H

Date 5/1/96, 19.....

TOWN OF NEW WINDSOR

**TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553**

TO Frances Roth 147 Sycamore Dr. DR.
New Windsor Ny 12553

DATE		CLAIMED	ALLOWED
4/22/96	<p> Zoning Board Mtg Planning Misc. - 2 Diciacomo - 5 Vasquez - 3 Linderman - 4 VGB Assoc. - 5 Robertson 3 // 58.50. 32 </p>	<p>75.00</p> <p>144.00</p> <p>219.00</p>	

PUBLIC HEARING

~~ROTHSTEIN, ALBERT & ELEANORE~~

MR. NUGENT: Request for interpretation/and or use variance on the question of conversion of single family to two family at 14 Garden Drive in an R-4 zone.

MR. NUGENT: For the record, please state your name.

MR. RONES: My name is Joe Rones, I represent Mr. and Mrs. Albert Rothstein who own the premises at 14 Garden Drive. They are both down in Florida at the present time and are due back in May. Mr. Rothstein is getting some rehabilitation therapy down there. He suffered a stroke a few years ago and is now, he can walk just a little bit but basically he gets around through the use of wheelchair and requires extensive care for his personal well-being. Most of that is provided by Eleanore but over the years, that has become more and more difficult and fortunately, the Rothstein's daughter, Shari, is prepared to, actually she has been helping out for about the past nine months or so and living at the premises but she has a husband and children of her own who need her attention as well and so the house needs renovation to accommodate that situation. Shari Franco and her husband and children want to move back into the house and the house needs some renovation in order to make it handicapped friendly to Mr. Rothstein. And to that end, they have engaged Jay Klein to design those renovations which he has and when he presented the plans for the building permit, the building inspector's office determined that the nature or of some of these renovations would make the premises possibly available as a two family usage and before he would issue a building permit, required the Rothsteins to make an application for an interpretation or variance to this board. So that is what brings us here tonight. I'd urge upon you that really I think that it is the interpretation that we're looking for and the Rothsteins are not requesting a variance to make this a two-family home. The renovations are being made not for the purpose of representing the property out to strangers, but for merely facilitating the presence of their daughter,

Shari, and her family back into the household so that she can help with the care of her father. And I do believe there is nothing in the zoning ordinance, in the New Windsor zoning ordinance which really contravenes that because it provides that this is a single family neighborhood and as long as all of the persons are in fact related by blood, marriage or adoption, they are considered to constitute a family and it's only when we go outside of that those relationships that the zoning board talks about the number of persons that should be limited to a dwelling. So, we don't come here seeking a variance in order to secure any financing from an institution or lender, that is requiring it to be authorized to be a two-family house. In fact, even though there are going to be two entrances, one of which is going to be a handicapped entrance, the living quarters aren't really separated in the sense that they would be if there were two different families living in the structure. So that is just an overview of the situation and Jay Klein, the architect is here and he can explain the reasoning for the design as I have described it in some more detail. But simply really we just need an interpretation that these plans be issued a building permit on the basis that we're merely making interior renovations to a one family structure and it's going to remain one family structure. Jay?

MR. KLEIN: Just very quickly, the interior renovations are exactly what as we state, it's really becoming a three bedroom, a three room apartment what was the, is presently the garage is now going to become a master bedroom, a large handicapped accessible bathroom, everything is, everything is according to the American Disabilities Act. Again, Mr. Rothstein is in a wheelchair so that is why it necessitated this ramp for the new entrance. The living room is actually the existing family room, nothing is changing there and the rear sun room, Florida room, whatever you want to call it is going to become a kitchen with handicapped accessible facilities. There is no addition involved here, this is all within the existing confines of the existing structure so we're not doing anything there. Exterior-wise, we're going to aesthetically improve the look of the home. There's some rotted wood, this is a

33 year old structure, and they want to upgrade it, new siding, painted and that really essentially is construction-wise is all that we're doing. We hope the board looks favorably upon this request.

MR. REIS: Jay, other than the ramp and the new facade, the footprint of the structure remains the same?

MR. KLEIN: That is correct.

MR. REIS: Exterior-wise, it's going to remain the same.

MR. KLEIN: What's now a garage is of course a large garage door that will become siding and a window or two like two windowss what will be the master bedroom facing Garden Drive.

MR. KANE: Mike, as far as the building department's concerned, what was your reasoning to look for an interpretation that this might be a two-family house?

MR. BABCOCK: Well, basically it's a separate unit, it's got a kitchen, bath, living room, bedroom and there's another kitchen, bathroom, living room and bedroom on the other end of the house so it could be construed as a two-family house, all this, it is connected by a door.

MR. KANE: Is that a locking door or is that just a--

MR. KRIEGER: You might also ask Mr. Klein that.

MR. BABCOCK: You'd have to ask him.

MR. KLEIN: The access door between the two kitchens is a pass door, it's not, it's a privacy lock but it's not a locked door. It's an accessible door just for privacy.

MR. TORLEY: Again a handicapped.

MR. KLEIN: Handicapped widths, that is correct.

MR. KRIEGER: Basically either a hollow or solid?

MR. KLEIN: Hollow are solid core makes no difference. Interestingly in the ANSI code, American National Standards Institute which the American Disabilities Act refers to says a handicapped door has to be 32 inches wide. Ours are wider. Why, because if you put a 32 inch door in, it doesn't comply because you have stops on the door so half inch there half inch there you lost an inch so we go to a two foot ten door but interesting enough, in our construction industry today, two foot ten door costs more than a three foot door so we're putting in three foot doors for economy and accessibility.

MR. NUGENT: Mike, even though, I'm just trying to understand, even though this was told to you in the beginning that members of the same family were going to live there, you knew that right from the beginning?

MR. BABCOCK: That is correct, yes, I did.

MR. TORLEY: But I think Mike was quite properly saying based on the plans this is what he thought.

MR. NUGENT: Yeah.

MR. KRIEGER: His job is to raise questions. The zoning board's job is to answer that.

MR. KANE: I'd like to hear from the public if there's no other questions.

MR. NUGENT: Me too. At this time, I'd like to open it up to the public. Please try to be to the point and not be repetitious. Anyone here care to speak in the audience? State your name and address for the girl.

MR. IRVING PAZETSKY: Irving Pazetsky. The gentleman representing the gentleman who is trying or the family that is trying to use an occupation and to use a house that has been constructed pretty much with everybody here, some of them 35 years ago, 38 years ago. Now, so that we understand those of us who have lived there and now I'm representing those who are here, I have returned from the south and picked this up because I

too have opened and do own and do actually have the house in action now. If when these people all of them moved in, there was the cut, you do not have a two or more house that was not permitted. It has been caught up in this court and was turned away many times before this time over a course of maybe eight, ten, fifteen years ago. I live across directly there and so do some of these gentleman here. We live there, our families have been brought up, they have been, we have, all of us relied on the fact that this is, this is the house and we have gone with it and we're very few people have come and said well, I have this and I need more. It can be in the way of the court to say in this particular case you have a very very different case and if a man is in a position that he can't help himself and there are children who will give of themselves to come in, fine, you have got a good case. However, that that was a door in the front of his house that was a wide driveway door which was opened and in my own knowledge has been opened for the last 13 years open so you're looking there, you see the garbage, a car halfway out, this is not from day, this is a long way. If it's only for this person to then say look, I have my family or he has his wife has said or the family has come in and said we want to help the man, what are we doing? We'll do this, we'll do that, we'll do that and it's a few years at least we can be with him. These are all great things. But if the court decides otherwise, let them know that have the burden that goes with everybody else who have stayed with this course. They kept it just the way it was. So you have some 30 houses there that are living with it, abiding with it and now, you say this man has come here, I know how long he's been, I liked the man, I knew the man, but it was a long time the house was in half repair. It was laid out, it wasn't one of the best. It was pretty close to one of the worst. However, this is what the court is going to see. They are going to do this, they are going to do that. They are going to do that and now after some 25 years or so, no, it was only 12 years. Actually, they now are going to close the garage door after all these years and the garage will be out there till they get it in. And this I'm doing because I'm fortunate, I and Mrs. Pazetsky disappear for eight months of the year but these are my people.

These are the people I have been with these, are the people I think should have and will enjoy what everybody else has done. This is the house is live with it, it's a one-family house, do whatever you will but I think the court should be, they should be aware of the fact that that this isn't what it is. We want to keep that place, those houses where everybody has with very very short maybe one other has gone ahead and said okay, we do it this way after you start it, do it this way, all the birds fly and you have nothing left. I as a person there who has been there in his 33 years I know the place, I know the people and I'll do what's best to keep what's there where they can. Thank you.

MR. NUGENT: Anybody else?

MR. LANGANKE: Are you for or against the variance? Are you in favor or not in favor?

MR. KRIEGER: You have to ask him two questions, is he in favor or not of the interpretation that they seek that would allow them to use it only for the family and is he in favor or not of a use variance. It's really two questions so out of fairness to him, if you are going to ask, you should give him an opportunity so that you understand his answer.

MR. LANGANKE: Okay.

MR. KRIEGER: Do you understand what I said? The application that they have brought is raising, they are raising two questions. One, the first in order they are seeking an interpretation of the law that would say this is not in fact a two-family house for the reasons that Mr. Ronas has already put on the record. Failing that application, if they fail to receive that, this is the nature of the application, if they fail to receive that interpretation, then the second request is that they be granted a use variance to allow the use of the property as a two-family home. But there are two questions and we and the board only reaches the second yes if the first one fails. They consider them in that order, the interpretation first and then the use variance. So when what Mr. Langanke is asking you whether you're in favor or against what I said to him

you have to ask in fairness whether you are for or against the interpretation, one, and two, whether you are in favor, again, it's two questions, to the use variance they are both, you can't just say in favor or against because there are two questions, not one.

MR. PEZETSKY: I live there, I have lived there. All of the rest practically speaking except the one that I can remember way, way back have lived with it. Now they are getting to an age too where they can't rush out on the lawn, the average age is way up there now they've done it, the children have gone on their way, in many cases or all the cases they are gone, why shouldn't they then have what they constructed, lived by and loved with the people that were there, that is all it comes down to, that this man hasn't been there, he's been there, he's been sick, fine, maybe the court will see in its own way that perhaps with family coming in, they can then modify his pain and carry him on. That is for the court to decide but understand also that there are others there who have lived by it, that they are going to be told that they are not.

MR. KRIEGER: If I understand correctly, just for the record, you are opposed to anything that would change the outward appearance of the house or change its allowed use for others, if he has family coming in to care for him, that is an internal matter but you don't want to see any change in the use of the house or the appearance of the house?

MR. PEZETSKY: The house is not A, appearance, B, C, occupancy, D, enjoyment, I don't go by that, everybody came in knowingly and having had the same thing. Look, the court can say in this particular matter perhaps but we know this month or a year from now, it may be another matter and somebody else may feel badly concerning it. The only thing is I walk around that thing every morning I see cars coming, darting out and I get very very much put out about the fact that they sprint with a car. And I make a point to just walk in front and stop them. You see there are certain things in a home that have to be kept as it should be. Now the people are older, what are we going to do. We go for a walk, what if people want to do other things.

The house was given to all of them. I don't have anything against the daughter that comes and tries to but she comes now with the whole family, with the children upstairs and now you have another thing going. That is for the court to decide but understand well there are some people there who can't see why it comes down on their head. They have lived by all the rules, they have done what they had to do and did it. Now what? And when it opens with one, comes in the whole thing and we have got guys coming out 18 years old, bang we go. That is the way we look at it. And that is what we tried to hold back, that is what we tried to have here. The court can in its own measure decide otherwise in this particular case but I tell you besides this particular case watch what grows in the orchard, you'll have a lot because these guys are running 65 to 70 years old. Thank you.

MR. LANGANKE: My question is answered.

MR. WILLIAM GOULD: I live two doors away from Rothsteins, knowing him all these years, they have been good neighbors, I know Mr. Rothstein's condition and I think he has to have something with entrance and from what Mr. Klein said here, I can see where no way it's going to really hurt anybody. I know Shari, I know all of them and I don't think they intend to make a two-family house out of it. It's for the convenience of the father mostly. And like Shari has three children of her own and with her father being disabled, maybe with the three children to have a place of their own is really ideal for them so I am actually in favor of letting them go ahead and do it.

MS. THERESA SANFORD: My name is Theresa Sanford and I own the property next to the Rothsteins, 12 Garden Drive. My father's been there about 16 years and I have to say also that the Rothsteins have been very good neighbors but unfortunately, my sister and I feel it would not be a good move for the neighborhood. Again, if the Rothsteins chose in several years be whatever circumstances should they win the lottery, they might want to move out of the neighborhood and I checked with the building inspector before the meeting and I understand that the variance goes with the sale

of the property, so like this other gentleman, Mr. Pazetsky said, you know, what's to happen. And I also believe it's going, it would eventually, not tomorrow, two, three, five years, eight, nine, ten years when kids are 16 years old, it incurs more traffic and there are older people in the neighborhood and I really just don't think it's a good move for the neighborhood. It was established as one family residential area and I, for the taxes people pay, you look for the piece and quiet people bought into that area as an established neighborhood. And that is what we see so that is our feeling but basically, we object to both of the applications.

MR. NUGENT: Thank you, ma'am.

MS. MARY PAUL: My name is Mary Paul, I live down the street from the Rothsteins, and I have to admire Shari and the Rothstein people. I know that I may be in the same boat, being a senior citizen and now a widow, I have thought too about my daughter maybe if I became incapacitated moving in with me. I think in New Windsor you're going to have to think about making mother-daughter homes. You're going to have to do that because it's very hard. Now those people will have a place to come to, their family are all up here, they'll go to Florida and come back, they need a home and he of course needs a place for a wheelchair, I think that you should give the variance to these people.

MR. NUGENT: Thank you. Anyone else? At this time, I'll close the public hearing and open it back up to the board for their discussion.

MR. REIS: We don't set a precedent here, each application is viewed on its own merits.

MR. NUGENT: Absolutely.

MR. REIS: As long as they understand that.

MR. TORLEY: If I am correct, if in my understanding if we interpret, make the interpretation that this is remaining a one family home simply being modified to allow for handicapped accessibility, then should the

Rothsteins at some point move, the house remains a one-family house, cannot be rented out two family.

MR. KRIEGER: That is correct. If they attempt to rent it out two adverse things happen. Number one, it would be illegal and the first thing that would happen is the, at any time that a building inspector or any law enforcement person found that it was illegal and it was in fact being used illegally and a two family house one-family house is illegal, they could cause it to be notwithstanding leases or plans or whatever shut down, then that is number one. Number two, if you have an occupant of, an owner, typically an owner who occupies half and rents the other half out, that owner better hope that he or she never gets in any trouble with respect to tenancy or the rent because they have no standing to go into court to seek an eviction so they are stuck with them. Anybody who's ever been a landlord, they'll know that you never want to be put in a situation where it's totally impossible to get rid of a tenant, should the relationship deteriorate.

MR. TORLEY: The second point being that assuming we make the interpretation, structure is modified as described then in the future for someone to come in, purchase the structure now say now I do want to convert this to a legal two-family home they would then have to go through the full procedure of a use variance application. That is for the benefit of the audience, a use variance has been made by the state nearly but not quite impossible to get, they want to ensure that the properties are used the way the zoning code says they must be used so to have two unrelated people would be almost impossible.

MR. KRIEGER: The law allows up to five.

MR. TORLEY: Not counting domestic service.

MR. KANE: In our interpretation, can we word it as such that we in no way are setting now or in the future that this is in any way considered a two-family home or to be used as such?

MR. KRIEGER: All you have to say is proposed use is

consistent with a one family use and that you are not conferring any permission or allowance in any way to why it is as other than a one-family house, if that is your decision.

MS. SANFORD: If in the future the house is sold, how is that policed?

MR. NUGENT: It's a single family house.

MR. KANE: Actually, ma'am, it's policed like any other single house that is in the Town of New Windsor or any other town. It's up to people, do what they want to do, I mean we know for a fact that there are a lot of single family homes in the Town of New Windsor now that are being used as two family homes, illegally, and unless somebody comes and says something about it then at that point, the zoning inspector will get involved.

MS. SANFORD: What's their jurisdiction, the building inspector, if the new family is then renting to somebody outside the family?

MR. KANE: As Andy just pointed out, totally illegal, they can close the house down right then and there.

MR. KRIEGER: The question if I may also add to that, enforcement you run across the same problems that you run across generally in enforcement. And we're speaking hypothetically now the house should be sold in the future and the neighbors should come, one or more of than one, should come to the building inspector and say we see activity in the house, a whole bunch of people who we suspect are not related, investigate it same thing as you do with any, enforcing any ordinance of any kind. There has to be a complaint, if there's a complaint there's an investigation.

MR. KANE: If I may point out--

MR. KRIEGER: If that investigation provides evidence then there is a prosecution but it's up to the vigilance of the neighbors when they see as I have heard many speak they know who the Rothsteins are, they either know or will shortly know if it is permitted who

the Francos are, who's in the family. I guarantee, I feel a hundred percent safe in saying this, that if there are different faces running different automobiles and going to and from the house, somebody's going to say something. If it isn't this cast of characters that you expect something, somebody is going to say something. I would encourage them though to do so forcibly and to come with a specific complaint, look, we see these people coming and going, we know he doesn't belong there, that aren't Rothsteins and aren't Francos.

MR. KANE: Do you understand? If we approve the first part, the interpretation of this, we're not granting any different use than what's being used right now. What we're saying that we have looked at the plans, we have listened to the people on what they are going to do with the home is consistent with a one family use that is all we're saying. We're not granting anything, different than what's going on right now. If that does get passed, I'm not saying it is or isn't, but they have nothing special more than what you have now.

MS. SANFORD: I have no problem at all with any kind of handicapped ramps. I totally understand that.

MR. KRIEGER: The decision about whether or not a particular residence is being used as a one family or two-family house, is a decision that has to be made on the facts of that particular case. There is no one indicator or more than one sure-fire indicator of a two-family house. Two kitchens in the same house doesn't automatically prove that there are two families. It can still be one family. Electric services, two telephones, these things don't necessarily automatically prove that there are two families there. They are factors, however, that can be taken into consideration to make an individual determination in each case whether in fact it is being used as a two-family house or not. It's not automatic, it's a question of fact.

MR. NUGENT: At this time, I'd like to we to do these one at a time. So we'll take the question of the interpretation first and we need a motion.

April 22, 1996

31

MR. KANE: Mr. Chairman, I move that we grant the favorable interpretation for the Rothsteins on the question of the single family home at 14 Garden Drive.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. LANGANKE	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE

MR. KRIEGER: You're withdrawing any application for a use variance?

MR. RONES: Yes. Thank you very much, gentlemen.

Rec'd, ZBA
4/1/96 PAB

Post

PUBLIC NOTICE OF HEARING BEFORE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 61

Request of Albert and Eleanore Rothstein

for a VARIANCE of the Zoning Local Law to permit:

Use Variance and/or Interpretation for conversion
of single-family dwelling to two-family dwelling;
being a VARIANCE of Section 48-9-Table of Use/Bulk,
Regs. - Cct. A, and 48-33 of Zoning Code.

for property situated as follows:

14 Garden Drive, New Windsor, N.Y.

known as tax lot Section 47 Block 1 Lot 51.

SAID HEARING will take place on the 22nd day of April,
1996, at New Windsor Town Hall, 555 Union Avenue, New Windsor,
New York, beginning at 7:30 o'clock P. M.

James Nugent
Chairman

Prelim.
Dec. 11, 1995
#95-61

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR
GRANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: NOVEMBER 7, 1995

APPLICANT: ALBERT ROTHSTEIN
14 GARDEN DRIVE
NEW WINDSOR, N.Y. 12553

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE: NOVEMBER 3, 1995

FOR (BUILDING PERMIT): TWO (2) FAMILY RESIDENCE

LOCATED AT: 14 GARDEN DRIVE

ZONE R-4

DESCRIPTION OF EXISTING SITE: SEC: 47, BLOCK: 1, LOT: 51
EXISTING ONE FAMILY RESIDENCE

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1. A TWO (2) FAMILY RESIDENCE IS NOT PERMITTED IN AN R-4 ZONE.

Christ Schmidt

BUILDING INSPECTOR

PERMITTED

PROPOSED OR
AVAILABLE

VARIANCE
REQUEST

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT
914-563-4630 TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF
APPEALS.

CC: Z.B.A., APPLICANT, B.P. FILE

IMPORTANT
REQUIRED INSPECTIONS OF CONSTRUCTION - YOU MUST CALL FOR THESE

OTHER INSPECTIONS WILL BE MADE IN MOST CASES, BUT THOSE LISTED BELOW MUST BE MADE OR CERTIFICATE OF OCCUPANCY MAY BE WITHHELD. DO NOT MISTAKE AN UNSCHEDULED INSPECTION FOR ONE OF THOSE LISTED BELOW. UNLESS AN INSPECTION REPORT IS LEFT ON THE JOB INDICATING APPROVAL OF ONE OF THESE INSPECTIONS, IT HAS NOT BEEN APPROVED, AND IT IS IMPROPER TO CONTINUE BEYOND THAT POINT IN THE WORK. ANY DISAPPROVED WORK MUST BE REINSPECTED AFTER CORRECTION.

1. WHEN EXCAVATING IS COMPLETE AND FOOTING FORMS ARE IN PLACE (BEFORE POURING).
2. FOUNDATION INSPECTION. CHECK HERE FOR WATERPROOFING AND FOOTINGS DRAINS.
3. INSPECT GRAVEL BASE UNDER CONCRETE FLOORS, AND UNDERSLAB PLUMBING.
4. WHEN FRAMING IS COMPLETED, AND BEFORE IT IS COVERED FROM INSIDE, AND PLUMBING ROUGH-IN.
5. INSULATION.
6. PLUMBING FINAL & FINAL HAVE ON HAND ELECTRICAL INSPECTION DATA AND FINAL CERTIFIED PLOT PLAN. BUILDING IS TO BE COMPLETED AT THIS TIME. WELL WATER TEST REQUIRED AND ENGINEERS CERTIFICATION LETTER FOR SEPTIC SYSTEM REQUIRED.
7. DRIVEWAY INSPECTION MUST MEET APPROVAL OF TOWN HIGHWAY INSPECTOR. A DRIVEWAY BOND MAY BE REQUIRED.
8. \$20.00 CHARGE FOR ANY SITE THAT CALLS FOR THE INSPECTION TWICE.
9. PERMIT NUMBER MUST BE CALLED IN WITH EACH INSPECTION.
10. THERE WILL BE NO INSPECTIONS UNLESS YELLOW PERMIT CARD IS POSTED.
11. SEWER PERMITS MUST BE OBTAINED ALONG WITH BUILDING PERMITS FOR NEW HOUSES.
12. SEPTIC PERMIT MUST BE SUBMITTED WITH ENGINEER'S DRAWING & PERC TEST.
13. ROAD OPENING PERMITS MUST OBTAINED FROM TOWN CLERKS OFFICE.
14. ALL BUILDING PERMITS WILL NEED A CERTIFICATION OF OCCUPANCY OR A CERTIFICATE OF COMPLIANCE AND THERE IS A FEE FOR THIS

Name of Owner of Premises ALBERT AND ELEANOR ROTHSTEIN
Address 14 GARDEL DRIVE, N.Y. Phone 562-4088
Name of Architect JAY S. KLEIN
Address BALMILLE ROAD, TOWN OF NEWBURGH, N.Y. Phone 565-6111
Name of Contractor H.P. RESNICK & CO.
Address WELLS ROAD, TOWN OF NEWBURGH, N.Y. Phone 561-1210
State whether applicant is owner, lessee, agent, architect, engineer or builder OWNER

If applicant is a corporation, signature of duly authorized officer.

(Name and title of corporate officer)

1. On what street is property located? On the SOUTH side of GARDEN DRIVE
and 450' feet from the intersection of BLOOMING GROVE TURNPIKE
(N.S.E. or W.)
2. Zone or use district in which premises are situated R-4 Is property a flood zone? Yes.....No X
3. Tax Map description of property: Section 33-60 47 Block 47 Lot 51
4. State existing use and occupancy of premises and intended use and occupancy of proposed construction.
a. Existing use and occupancy SINGLE FAMILY b. Intended use and occupancy TWO FAMILY
5. Nature of work (check which applicable): New Building..... Addition..... Alteration X Repair.....
Removal..... Demolition..... Other.....
6. Size of lot: Front Rear 190 FT W Depth 190 FT Front Yard..... Rear Yard..... Side Yard.....
Is this a corner lot? NO EXISTING
7. Dimensions of entire new construction: Front EXISTING BUILDING Rear..... Depth..... Height..... Number of stories 1
8. If dwelling, number of dwelling units..... Number of dwelling units on each floor.....
Number of bedrooms 4 Baths 3 Toilets.....
Heating Plant: Gas..... Oil X Electric/Hot Air..... Hot Water X
If Garage, number of cars 2 CAR
9. If business, commercial or mixed occupancy, specify nature and extent of each type of use NA
10. Estimated cost 30,000 Fee.....
(to be paid on this application)
11. School District CONSOLIDATE NEWBURGH SCHOOL DISTRICT

PLANS ARE IN 47-1-51 FILE

Costs for the work described in the Application for Building Permit include the cost of all the construction and other work done in connection therewith, exclusive of the cost of the land. If final cost shall exceed estimated cost, an additional fee may be required before the issuance of Certificate of Occupancy.

TOWN OF NEW WINDSOR, ORANGE COUNTY, N. Y.

TOWN OF NEW WINDSOR, ORANGE COUNTY, N. Y.

Examined.....19.....
Approved.....19.....
Disapproved a/c.....
Permit No.

Office Of Building Inspector
Michael L. Babcock
Town Hall, 555 Union Avenue
New Windsor, New York 12550
Telephone 565-8807

Refer —
Planning Board.....
Highway.....
Sewer.....
Water.....
Zoning Board of Appeals

APPLICATION FOR BUILDING PERMIT

Pursuant to New York State Building Code and Town Ordinances

Date... **RECEIVED NOV 9 0 3 1995**

INSTRUCTIONS

- a. This application must be completely filled in by typewriter or in ink and submitted in duplicate to the Building Inspector.
- b. Plot plan showing location of lot and buildings on premises, relationship to adjoining premises or public streets or areas, and giving a detailed description of layout of property must be drawn on the diagram which is part of this application.
- c. This application must be accompanied by two complete sets of plans showing proposed construction and two complete sets of specifications. Plans and specifications shall describe the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical and plumbing installations.
- d. The work covered by this application may not be commenced before the issuance of a Building Permit.
- e. Upon approval of this application, the Building Inspector will issue a Building Permit to the applicant together with approved set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises, available for inspection throughout the progress of the work.
- f. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Inspector.

APPLICATION IS HEREBY MADE to the Building Inspector for the issuance of a Building Permit pursuant to the New York Building Construction Code Ordinances of the Town of New Windsor for the construction of buildings, additions or alterations, or for removal or demolition or use of property, as herein described. The applicant agrees to comply with all applicable laws, ordinances, regulations and certifies that he is the owner or agent of all that certain lot, piece or parcel of land and/or building described in this application and if not the owner, that he has been duly and properly authorized to make this application and to assume responsibility for the owner in connection with this application.

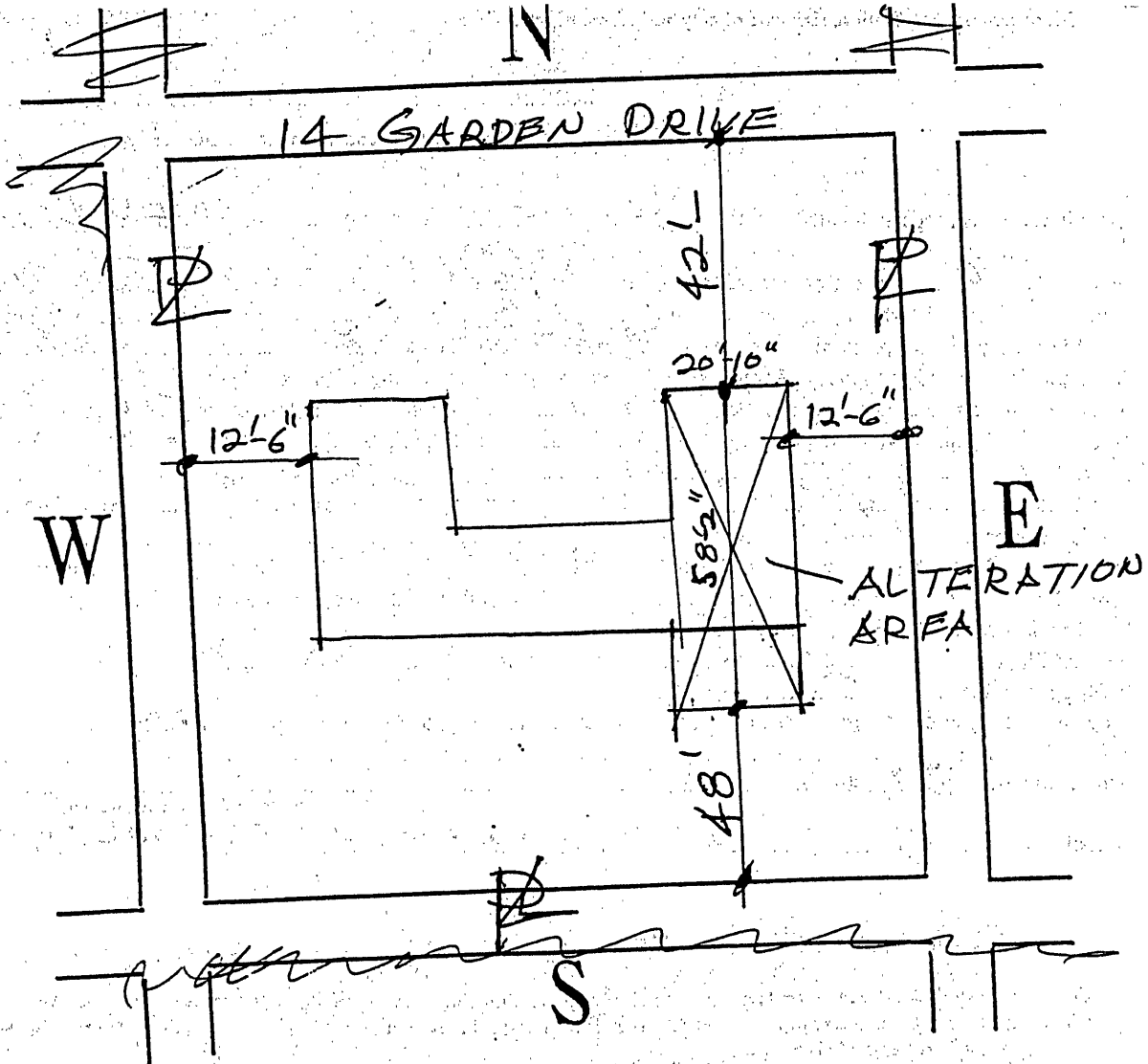
[Signature]
.....
(Signature of Applicant)

14 GARDEN DRIVE, NEW WINDSOR, N.Y. 12553
.....
(Address of Applicant)

PLOT PLAN

NOTE: Locate all buildings and indicate all set-back dimensions.

Applicant must indicate the building line or lines clearly and distinctly on the drawings.



ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR
COUNTY OF ORANGE : STATE OF NEW YORK

-----x
In the Matter of Application for Variance of

Albert & Eleanor Rothstein,

Applicant.

AFFIDAVIT OF
SERVICE
BY MAIL

#95-61.

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

PATRICIA A. BARNHART, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 7 Franklin Avenue, New Windsor, N. Y. 12553.

On April 1, 1996, I compared the 41 addressed envelopes containing the attached Notice of Public Hearing with the certified list provided by the Assessor regarding the above application for variance and I find that the addressees are identical to the list received. I then mailed the envelopes in a U. S. Depository within the Town of New Windsor.

Patricia A. Barnhart
Patricia A. Barnhart

Sworn to before me this
1st day of April, 1996.

Deborah Green
Notary Public

DEBORAH GREEN
Notary Public, State of New York
Qualified in Orange County
4984065
Commission Expires July 15, 1997

(TA DOCDISK#7-030586.AOS)



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

41

December 27, 1995

Eleanore & Albert Rothstein
14 Garden Dr.
New Windsor, NY 12553

RE: Tax Map Parcel #47-1-51

Dear Eleanore & Albert Rothstein:

According to our records, the attached list of property owners are within five hundred (500) feet of the above-referenced property.

The charge for this service is \$55.00, minus your deposit of \$25.00, leaving a balance due of \$30.00.

Sincerely,

Leslie Cook /cms

LESLIE COOK
Sole Assessor

/pab
Attachment

cc: Patricia Barnhart, ZBA

Koenig, Albert & Herta
156 Caesars Lane
New Windsor, NY 12550

County of Orange
255-275 Main St.
New Windsor, NY 12553

Capicotto Mark John & Debra Ann
2 Homewood Ave.
Newburg, NY 12550

Mozgiel, Edward & Anna
14 Louise Dr.
New Windsor, NY 12553

Freda, Eve & Richard
8 Louise Dr.
New Windsor, NY 12553

Schliphack, Kenneth & Diane
2 Garden Dr.
New Windsor, NY 12553

Pazoga, Steve Jr. & Carmela
4 Garden Dr.
New Windsor, NY 12553

Castanaro, Joseph
6 Garden Dr.
Newburgh NY 12550

McCaffrey, John & Wendy
8 Garden Dr.
New Windsor, NY 12553

Callas Family Revocable Trust
10 Garden Dr.
New Windsor, NY 12553

Mohr, Thomas & Joan
Apt. 7N 125 Cedar St.
New York, NY 10006

Petro, James R. Jr
PO Box 928
Vails Gate, NY 12584

Myzelow, Mary Jo & Sanford, Theresa
12 Garden Dr.
New Windsor, NY 12553

Scott, Robert & Marjorie
16 Garden Dr.
New Windsor, NY 12553

Gould, William & Florence
18 Garden Dr.
New Windsor, NY 12553

Noyes, Catherine
20 Garden Dr.
New Windsor, NY 12553

Petro, Thomas & Maxine
22 Garden Dr.
New Windsor, NY 12553

Finkenaur, Jeanne
24 Garden Dr.
New Windsor, NY 12553

Mocko, Charles
105 Fern Ave.
Newburgh, NY 12550

Benichasa, John & Sonia
9 Birchwood Dr
New Windsor, NY 12553

Work, Ray & Muriel
32 Garden Dr.
New Windsor, NY 12553

Giordano, Dominick & Roxann
34 Garden Dr.
New Windsor, NY 12553

Rohan, Frank & Stella
36 Garden Dr.
Newburgh NY 12550

MacGregor, William Jr. & Jane
42 Garden Dr.
New Windsor, NY 12553

Walters, Harry & Janice
16 Faye Ave.
New Windsor, NY 12553

Baker, Charles & Erma
20 Faye Ave.
New Windsor, NY 12553

Edith Jones
24 Faye Ave.
New Windsor, NY 12553

Oestrich, Clayton & Frances
28 Faye Ave.
New Windsor, NY 12553

Bonura, Joseph A.
101 Route 9WS
New Windsor, NY 12553

The Town of New Windsor
555 Union Ave
New Windsor, NY 12553

Moy, Raymond & Pamela
23 Creamery Dr.
New Windsor, NY 12553

Capifali, Nester & Nilsa
25 Creamery Dr.
New Windsor, NY 12553

Ruperto, Donna
15 Garden Dr.
New Windsor, NY 124553

Pesetzky & Shirley Pestetzky Loving Trust
13 Garden Dr.
New Windsor, NY 12553

Gonzalez, Harold & Daris
11 Garden Dr.
New Windsor, NY 12553

Reilly, Pamela
9 Garden Dr.
New Windsor, NY 12553

Husted, Robert & Herska, Lisa
7 Garden Dr.
New Windsor, NY 12553

Hurley, Richard & Gina
5 Garden Dr.
New Windsor, NY 12553

Paul, John & Mary
3 Garden Dr.
New Windsor, NY 12553

Doupona, Mary
1 Garden Dr.
New Windsor, NY 12553

Malizia, Fredrick & Dorothy
17 Garden Dr.
New Windsor, NY 12553

P.S. publish immediately. Send bill to Applicants at below address.

PUBLIC NOTICE OF HEARING BEFORE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 61

Request of Albert and Eleanore Rothstein

for a VARIANCE of the Zoning Local Law to permit:

Use Variance and/or Interpretation for conversion
of single-family dwelling to two-family dwelling;
being a VARIANCE of Section 48-9 - Table of Use/Bulk,
Regs. - Col. A, and 48-33 of Zoning Code.

for property situated as follows:

14 Garden Drive, New Windsor, N.Y.

known as tax lot Section 47 Block 1 Lot 51.

SAID HEARING will take place on the 22nd day of April,
1996, at New Windsor Town Hall, 555 Union Avenue, New Windsor,
New York, beginning at 7:30 o'clock P. M.

James Nugent
Chairman

By: Patricia A. Barnhart,
Secy.

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

95-61.

Date: 3/19/96.

I. ✓ Applicant Information:

- (a) Albert Rothstein 14 GARDEN DRIVE 562-4088
(Name, address and phone of Applicant) (Owner)
- (b) _____
(Name, address and phone of purchaser or lessee)
- (c) _____
(Name, address and phone of attorney)
- (d) Jay S. Klein BALMVILLE RD 565-6111
(Name, address and phone of contractor/engineer/architect) ✓

II. Application type:

- (☒) Use Variance (☐ Sign Variance)
- (☐ Area Variance (☒ Interpretation)

III. ✓ Property Information:

- (a) R 4 14 GARDEN DRIVE 47-1-51. 100' x 125' approx.
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? (L.B.) LOCAL BUSINESS
- (c) Is a pending sale or lease subject to ZBA approval of this application? No
- (d) When was property purchased by present owner? MAY 1964.
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? No.
If so, when? _____
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? No
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: No

IV. ✓ Use Variance.

- (a) Use Variance requested from New Windsor Zoning Local Law, Section 48-9., Table of Use/Bulk Regs., Col. A., to allow:
(Describe proposal) _____

✓(b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

We are requesting a variance in order to make the house handicapped accessible for Mr Albert Rothstein (owner) as well as modify the interior to allow for our daughters family to live on the premises to aid with the day to day care of Mr. Rothstein as we have been financially unable to afford a daily aide.

✓(c) Applicant must fill out and file a Short Environmental Assessment Form (SEQR) with this application.

(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes No x.

If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may request this list from the Assessor's Office.

V. Area variance: N/A

(a) Area variance requested from New Windsor Zoning Local Law, Section , Table of Regs., Col. .

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area <u> </u>	<u> </u>	<u> </u>
Min. Lot Width <u> </u>	<u> </u>	<u> </u>
Reqd. Front Yd. <u> </u>	<u> </u>	<u> </u>
Reqd. Side Yd. <u> </u>	<u> </u>	<u> </u>
Reqd. Rear Yd. <u> </u>	<u> </u>	<u> </u>
Reqd. Street Frontage* <u> </u>	<u> </u>	<u> </u>
Max. Bldg. Hgt. <u> </u>	<u> </u>	<u> </u>
Min. Floor Area* <u> </u>	<u> </u>	<u> </u>
Dev. Coverage* <u> </u> %	<u> </u> %	<u> </u> %
Floor Area Ratio** <u> </u>	<u> </u>	<u> </u>
Parking Area <u> </u>	<u> </u>	<u> </u>

* Residential Districts only

** No-residential districts only

N/A

(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3)

N/A
 whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance:

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: *N/A*

(a) Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign 2	_____	_____	_____
Sign 3	_____	_____	_____
Sign 4	_____	_____	_____
	_____	_____	_____

(b) *N/A* Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size signs.

(c) *N/A* What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

✓ VII. Interpretation. ~~at~~

(a) Interpretation requested of New Windsor Zoning Local Law, Section 48-33, ~~Table of~~ _____ Regs., Col. _____.

(b) Describe in detail the proposal before the Board:

Handicap modification of existing entrance into the house, as well as raising of floors to allow for wheelchair accessibility. A handicap bathroom and kitchen will be added, as well. There will be other interior modifications made to allow for our daughter's family to live with us. There will be no walls dividing the two living areas, but rather, a doorway between, with no lock.

✓ VIII. Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or

upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

All existing external structures will remain visually identical to the previous, with the exception of the addition of a handicapped ramp.

✓IX. Attachments required:

- ✓ Copy of referral from Bldg./Zoning Insp. or Planning Bd.
- ✓ Copy of tax map showing adjacent properties.
- N/A Copy of contract of sale, lease or franchise agreement.
- ✓ Copy of deed and title policy.
- ✓ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- NA Copy(ies) of sign(s) with dimensions and location.
- ✓ Two (2) checks, one in the amount of \$50.00 and the second check in the amount of \$300.00, each payable to the TOWN OF NEW WINDSOR.
- ✓ Photographs of existing premises from several angles.

X. Affidavit.

Date: March 19, 1996.

STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE)

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

Eleanor B. Rothstein
 x Alvin Hattis
 (Applicant) (Proxy Attached)

Sworn to before me this

13th day of March, 1996.

XI. ZBA Action:

(a) Public Hearing date: _____.

SHEILA C. KUNDIN
 Notary Public, State of New York
 No. 4879810
 Qualified in Orange County
 Commission Expires Dec. 15, 1996
Sheila C. Kundin

(b) Variance: Granted (____) Denied (____)

(c) Restrictions or conditions: _____

_____.

NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.

(ZBA DISK#7-080991.AP)

P R O X Y A F F I D A V I T

SUBMISSION OF APPLICATION FOR VARIANCE # 95-61.

ZONING BOARD OF APPEALS

TOWN OF NEW WINDSOR

STATE OF New York)
) SS.:
COUNTY OF Orange .)

Eleanore Rothstein, being duly sworn, deposes
and says: I am the ~~one of the~~ one of the record owners of
a certain parcel of land within the TOWN OF NEW WINDSOR
designated as tax map SECTION 47 BLOCK 1 LOT 51.
I HEREBY AUTHORIZE Shari Franco ~~of~~ (company name)
to make an application before the ZONING BOARD OF APPEALS as
described in the within application.

Dated: April 1, 1996.

x. Eleanore B. Rothstein
(Signature of Corporate Officer) Owner.
Title: Owner

Sworn to before me this

1st day of April, 1996.

Patricia A. Barnhart
Notary Public

(ZBA DISK#1-012996.CP)

PATRICIA A. BARNHART
Notary Public, State of New York
No. 01BA4904434
Qualified in Orange County
Commission Expires August 31, 1997.

Date 12/22/95

19

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

TO Frances Roth 147 Sycamore Dr DR.
New Windsor NY 12553

DATE

CLAIMED

ALLOWED

2/11/95	Zoning Board Meeting	75.00		
	Misc - 2			
	Bathstein - 8 36.00			
	Digoratu - 4			
	Denhoff - 4			
	Rhodes - 19			
	H.R. & C - 10			
	Rosenbaum 9			
	56 pgs	252.00		
		327.00		

PRELIMINARY MEETINGS:

ROTHSTEIN, ALBERT

Mr. Jay Klein appeared before the board for this proposal.

MR. NUGENT: Request for use variance to convert one-family to a two-family residence at 14 Garden Drive in an R-4 zone. Use not permitted (47-1-51)

MR. KLEIN: I am a local architect in Newburgh, New York representing Mr. and Mrs. Albert Rothstein, who are present at this meeting. We are here to request a variance to transform a one-family home into a two-family home in an R-4 zone. The Rothsteins have lived at this residence, next spring will be 32 years, 14 Garden Drive, and the reason for this request is Mr. Rothstein has suffered a terrible medical handicap in the last five, six, seven, eight years, he had a heart attack and had several strokes. He's confined to a wheelchair. We have this home that we're not adding to, we're using the existing square footage in the home to construct a, utilizing the garage, a family room and a sun room in one section of the home. I have plans, pictures of the existing home and we would like to, the proposal is to construct a handicapped apartment for Mr. and Mrs. Rothstein. At the same time, their daughter, Sherry, who is the youngest family member married and has, they are blessed with children, she just had twins so Sherry and her husband and family are moving back into the home where she was born.

(Whereupon, Mr. Reis entered the room.)

And to help in this family situation with Mr. Rothstein and his handicap, and what we want is a mother-daughter situation. The plans as we have shown is there will be privacy between the two families, but there's access within the home of a handicapped size doorway between what would be this new handicapped apartment and the regular home. We're transforming this apartment to meet the new York State Fire Prevention and Building Construction Code, such as insulated glass windows, new windows, ventilation, actually we're going to have heating, air conditioning, we'll have, if this is approved and we're able to go ahead with this and get a

building permit, it will be actually two separate kitchens and the access between the two areas is right by these two kitchens. There will be what's now a sliding glass door will be a wall but also with a smaller handicapped size doorway. Essentially, that is it, except for some of the technicalities of building like a ramp to the side of what's now the existing garage. We're going to have a little ramp with a separate entrance into the little apartment. The rest of the home will stay the same and generally, we think this is going to improve the look of the home plus it's going to be upgraded, painted and some rotted wood is going to be replaced as these things happen after, the structure probably is 35 years old. If you have any questions that you'd like to ask us, the Rothsteins would be happy to answer.

MR. KANE: Mike, the reason they can't get a building permit is basically because of the two kitchen scenario?

MR. BABCOCK: Because of the construction of the whole thing, we felt--

MR. KANE: The door, the handicapped size door doesn't qualify to keep it as one-family home since they do have open access.

MR. NUGENT: We have been through this not too long ago again on the Glendale for that other lady.

MR. BABCOCK: That is correct, well, we looked at the plans, Jay sent the plans in, we had the plans and based on our review, it's a separate unit as far as the construction of it. So we felt that it should come to this board. If this board wants to review it and feels that it is not a separate unit, that is fine if they want to make that determination.

MR. NUGENT: I thought that, I thought that one of the major stumbling blocks when we had that one down here that was there was no locked, no method to lock one section from the other, I thought that was what we basically based our decision on.

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MR. KANE: That is what I remember too.

MR. NUGENT: As long as there was accessibility to either side.

MR. KANE: We're looking at getting the use variance is going to be very difficult. You have to prove a financial hardship here, that would be very difficult in numbers to prove. What we're saying since this is basically the same family, and there's access from one portion of the house to the other. There's, you really in my mind's eye, in looking at this, you may not need the use variance on this. You're not changing the structure of the home, you're remodeling the inside and there's access from one portion to the other?

MR. KLEIN: Yes.

MR. TORLEY: Probably be even more defensible if there were more than one handicapped sized doorway, several, let's say a personal question here, if there's several of the other doorways in the other half of the building were converted to handicapped that would really make a better case.

MR. KANE: Have you looked at the plans?

MR. KRIEGER: Basically, what it amounts to is this. There's a dispute ongoing or question, I shouldn't say dispute, but a question as to when a structure becomes a two-family home. The law in New Windsor says up to five unrelated persons can live in a single dwelling that constitutes a one-family home, it places no limits on the amount of related people can live in one-family dwelling. So there are basically two questions here, if it is for an apartment to rent out to others then it becomes a use variance very clearly. The question here is first of all, is a use ~~various~~ necessary at all, is the question that the board must decide. That is one. And two, then if it is necessary, does this qualify for a use variance. As Mr. Kane indicated, the criteria that the state has set forth for the granting of a use variance and has nothing to do with this board or this town they get the requirements from the state, are in some respects very stringent, very harsh, very

Variance

difficult to meet. The whole thing that they are going through at this point or discussing is a question of interpretation, whether that is necessary at all. So as long as you have a single, as I say, so long as related people live in the home. That is what the question that they are going through on a question about whether the use variance is necessary at all.

MR. KLEIN: Mr. Krieger, I must say that I was just a little surprised that we were asked to come cause it was my own shortcomings in the beginning when the Rothsteins approached me as their architect to develop this plan, that because it was one family, I mean and it's going and it's remaining one family when I came to Mike and Mike said Mr. Babcock said well, we may have to go to the ZBA because it's like a mother daughter and it's not allowed, it's an R-4 zone and one-family dwelling.

MR. KRIEGER: You're thinking is not inappropriate and the fact that you are here has to do only with the fact that there is an ongoing question with regard to the interpretation of the statute and then when one crosses the line between one and two-family home and I assume without knowing that the building inspector looking at your plans and under the circumstances didn't feel comfortable making that interpretation himself.

MR. KLEIN: Yes.

MR. KRIEGER: One of the functions of the ZBA is as a board of appeals. So that when an interpretation is made by the building inspector, it gives the applicant someplace to go to appeal that to reopen that question and it's that appeals function that the members of the zoning board are inquiring about looking into.

MR. KANE: So how would that, how would we set that up to proceed with cause I think this needs more of an interpretation.

MR. KRIEGER: Exactly, so you have a dual application, interpretation or a use variance?

MR. TORLEY: But in either case, we have to go to a

public hearing.

MR. KRIEGER: Unfortunately, the ZBA is by state law powerless to act without a public hearing, they simply cannot by law, however much they may want to.

MR. TORLEY: But I was just hoping that we could find some way if we were amenable to making the interpretation as to the applicant's desire that they not have to go through the rest of the process.

MR. KANE: They are here, they have to, it's already been determined and you have to formally answer that you have to do that in a public hearing.

MR. KRIEGER: Unless two things, if the building inspector should change his interpretation then the action of this board wouldn't be necessary, I'm not suggesting that he should, I'm not suggesting that he take any action at all. If he wants his determination to stand, then in order for it to be appealed, it must go through the process here.

MR. KLEIN: This door between both sides of the home, it's not a locked door, correct?

MR. KLEIN: No, not a locked door.

MR. KANE: No way of locking that door?

MR. KLEIN: No, the reason for that it's handicapped situation, Mrs. Rothstein works, Mr. Rothstein is home, god forbid there's an emergency, his daughter has quick and easy access and it's just a matter of privacy but it's not a locked situation, no, absolutely not.

MR. KRIEGER: One thing I should say with respect to the interpretation, if it should be determined either now or at the public hearing by this board that it is not in fact a two family use that it is a one family use, I'm not suggesting what they are going to do or whether they ought to do that, I'm just saying if it happens that way, what it will mean is that the apartment or the separate, the dwelling, the separate area that has been created or additional area that has

been created will not be rentable to unrelated people as a two-family house so it would be limited to use by relation as I told you, by relations.

MR. KLEIN: Yes.

MR. KRIEGER: If there should come a time when the Rothsteins are no longer residing there, it will not be available unless a use variance is granted, it won't be available to the remaining dwellers to rent out to strangers.

MR. KANE: One of the most difficult aspects of getting the use variance is what they call reasonable return on that property and that doesn't necessarily make that, that means you have to not make a profit on the sale, you have to be able to show that you cannot use that property for ever use that is on record for that and that is pretty difficult to do.

MR. KRIEGER: Possible use by the zoning listed in the zoning code has to be ruled out by what the law requires is competent financial evidence interpreted by the courts as being dollars and cents proof, you go down the list, can't do this, can't do that and that requires in most cases some form of expertise, which is what makes the use variance such a high hurdle.

MR. KLEIN: Right.

MR. NUGENT: Michael, you heard all the comments from the attorney and from the board members and you still feel that you would like to go through with it?

MR. BABCOCK: I think we should Mr. Chairman, not because of the relationship, I think because of the construction that is what we're looking at.

MR. KANE: So, we'll make it a formal interpretation that way and put it--

MR. BABCOCK: That is correct.

MR. KANE: May I make a recommendation? I move that you amend your petition to the zoning board to include

an interpretation of the building inspector's deposition and also keep on there depending on the outcome of that interpretation proceed with the use variance after that in case.

MR. NUGENT: Very good. Are you in agreement?

MR. TORLEY: Yes.

MR. KRIEGER: Since you have to proceed with the zoning board you can basically do two at the same time, you can ask for an interpretation. If that doesn't go your way, ask for a use variance, one public hearing, one application, one trip, do both at once, if the interpretation's in the way you want to, you may elect not to proceed with the use variance, your election.

MR. KLEIN: Yes, that is agreeable.

MR. NUGENT: I'd like to accept a motion.

MR. KANE: I move that we set up the applicant for a public hearing for an interpretation of the building inspector's decision and possible use variance.

MR. TORLEY: Second it.

ROLL CALL

MR. LANGANKE	AYE
MR. KANE	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE
MR. REIS	AYE

MR. KRIEGER: These are the criteria that the law has set forth for a use variance which is the second leg of your application but if you get the interpretation you may elect not to proceed but you don't have to make that election earlier than the public hearing.

MR. KLEIN: Does the board require the plans to stay or--

MR. NUGENT: Bring them back with you.

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MR. KLEIN: Thank you very much.

MR. KRIEGER: Bring the copy of the deed and copy of the title policy with you at the public hearing, please. Again, there's no need for me to keep it, I just want to look at it, you have to, you can just make copies of it.

MR. KLEIN: Yes.

MR. KRIEGER: Which Garden Drive is this?

MRS. ROTHSTEIN: 14.

MR. KLEIN: At the triangle off of Blooming Grove Turnpike.

Search

FILE NO. ..6Q-5Q4-5.

Homestead Abstract Company of Orange County, Inc., Does Hereby Certify, That it has caused the Indices and Dockets in the County Clerk's Office of Orange County, N. Y., to be searched for Deeds, General Assignments, uncanceled Mortgages and Mortgages to Loan Commissioners, executed by, and uncanceled Lispendens, Collector's Bonds, Sheriff's Certificates of Sale, Orders Appointing Receivers, Insolvent Assignments, Foreclosures by Advertisement, Homestead Exemptions, Contracts for Building Loans, Federal Tax Liens, Bail Bond Liens and Individual Surety Bond Liens, docketed against the following person or persons, corporation or corporations, during the period or periods stated; and for uncanceled Contracts for Conditional Sales docketed during the period or periods stated, but for not more than three years prior to date of this certificate; and for uncanceled Mechanics' Liens docketed during the period or periods stated, but for not more than two years prior to date of this certificate:

Myndert Schaaf and Kathleen Schaaf from April 27, 1964 to May 7, 1964

Albert Rothstein and Eleanor Rothstein from May 4, 1964 to October 26, 1964

and also that it has caused the Dockets of Judgments, in said office, to be searched for unsatisfied Judgments and Transcripts of Judgments docketed against

Myndert Schaaf and Kathleen Schaaf from April 27, 1964 to May 7, 1964

Albert Rothstein and Eleanor Rothstein from October 26, 1954 to October 26, 1964

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And finds as follows, viz:—Affecting lands in the Town of New Windsor, Orange County, New York, as described in a deed executed by Joseph Masarachia to F. Charles Sorton and Helen M. Sorton, dated June 29, 1954 and recorded in Book 1311 page 18.

Dated, Middletown, N. Y., October 26, 1964.

C&N

NSB-Rothstein #10,238

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
161 WASHINGTON AVENUE
ALBANY, NEW YORK 12201

March 30, 1964

IN REPLY REFER TO
Form L-154

Mrs. Kathleen Schaaf, Executor
c/o Lemon & Callahan
Box 32
Cornwall, New York

ESTATE OF
Myndert Schaaf
DATE OF DEATH:
July 14, 1963

Dear Madam:

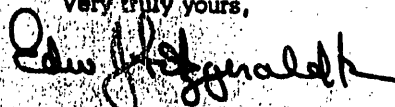
ESTATE TAX CLOSING LETTER

The Federal estate tax liability for the estate named above is as follows:

Gross estate tax	\$	73.14
Less credits allowed:		
State death taxes	\$	
Federal Gift Tax	\$	
Tax on prior transfers	\$	
Foreign death taxes	\$	None
NET ESTATE TAX	\$	73.14

This closing letter, together with cancelled check(s) or receipt(s) showing payment of the net estate tax shown above, may be exhibited as evidence that the Federal estate tax liability has been discharged for the above named estate.

Very truly yours,



Edward J. Fitzgerald, Jr.
District Director

THIS IS AN IMPORTANT DOCUMENT

Surrogate's Court: Orange County File No. 683 - 63

The petition of Kathleen Schaaf, verified July 30, 1963, states that Myndert Schaaf, died a resident of the Town of New Windsor on July 14, 1963, intestate, leaving him surviving:

Kathleen Schaaf - widow
Donald John Schaaf - son
Carol Ann Kohout - daughter

Order for appraisal made August 16, 1963.

The estate tax schedules include the following real property:

Real property known as 14 Garden Drive, Town of New Windsor, N.Y. in name of decedent and Kathleen Schaaf

Valued at \$26,000.00

Net estate \$62,528.00

Order made October 29, 1963 fixing tax at \$626.40.

Tax receipt for \$595.08 (less \$31.32 discount) filed December 4, 1963.

No federal estate tax receipt.

* * *

Kathleen Schaaf

to

Albert Rothstein and

Eleanor Rothstein,

his wife

F. C. W. Deed with

Lien Covenant

Dated May 5, 1964

Cons. \$10.00 etc.

Ack. May 5, 1964

Rec. May 6, 1964

Book 1662 Page 181

Habendum Clause - as tenants
by the entirety

Conveys:

Same lands as described in Deed Book 1311 page 18 subject to same restrictions and covenants, same clause relative to sewage disposal and water supply systems and recites Deed Book 1359 page 489.

Said Myndert Schaaf having died a resident of Orange County, New York on July 14, 1963.

Subject to grants to utility companies as the same appear of record and to such state of facts as an accurate survey will show.

Recites: Third; That the said premises are free from incumbrances except as aforesaid.

Albert Rothstein and
Eleanor Rothstein,
his wife

to
Newburgh Savings Bank,
a banking corporation of
the State of New York

Bond and Mortgage with
Lien Covenant

Dated May 5, 1964

Ack. May 5, 1964

Rec. May 6, 1964

Book 1408 Page 105

To secure Twenty Two Thousand Dollars with interest from the date hereof at the rate of 5 1/4% per annum payable interest only on June 1, 1964 and payable as to both principal and interest the sum of \$121.50 on July 1, 1964 and a like sum on the 1st day of each and every calendar month thereafter until said principal sum and interest shall have been paid in full; with the privilege to the mortgagor to pay all or any part of said principal sum in addition to the payments hereinbefore required on any interest date.

On same lands as described in Deed Book 1311 page 18 subject to same restrictions and covenants, same clause relative to sewage disposal and water supply systems.

Subject to the provisions of a grant made by Morris M. Levinson to Central Hudson Gas and Electric Corporation and New York Telephone Company by instrument dated September 18, 1952 and recorded in the Office of the Clerk of Orange County on November 7, 1952 in Liber 1249 of Deeds at page 534.

Being the same premises described in a deed dated May 5, 1964, made by Kathleen Schaaf and Albert Rothstein and Eleanor Rothstein and delivered simultaneously herewith and this mortgage is given to secure so much of the purchase price of said premises.

Contains clause relative to additional payments to be applied toward payment of taxes, &c.,

Among Mortgage covenants:

20. Covers certain fixtures and articles of personal property (with certain exclusions).

23. That the whole of said principal sum shall become due at the option of the mortgagee in the event of sale or conveyance of the premises hereinbefore described.

24. That the whole of said principal sum shall become due at the option of the mortgagee if the premises hereinbefore described or any portion thereof are used or employed for purpose or purposes different from the purpose or purposes for which said premises are used or employed at the date of this mortgage.

* * *

Nothing else found.

This Indenture,

MAY Made the 5th day of
Nineteen Hundred and Sixty-Four.
Between KATHLEEN SCHAAF, residing at 25 Carobene Court in the

City of Newburgh, Orange County, New York,

party of the first part, and

ALBERT ROTHSTEIN and ELEANOR ROTHSTEIN, his wife, both

residing at no number North Plank Road in the Town of Newburgh,
Orange County, New York,

parties of the second part,
Witnesseth that the party of the first part, in consideration of -----
TEN AND NO/100-----Dollars (\$10.00)
lawful money of the United States, and other good and valuable consideration,
paid by the parties of the second part, does hereby grant and release unto the
parties of the second part, their heirs and assigns forever, all
that certain parcel of land situate in the Town of New Windsor,
County of Orange and State of New York, known and designated as
Lot #5 on a map entitled Windsor Acres, Section #4, made by Robert
Morrison, P. E., which map is dated December, 1952 and which map was
filed with the Orange County Clerk's Office on January 14, 1953, and
numbered 1526 filed in Pocket 15, Folder A, said parcel being 100
feet front, 100.05 feet in rear, 186.83 feet on the west line and
190.17 feet on the east line.

SUBJECT to the following restrictions and covenants which run
with the title of the lands hereby conveyed forever:

1: That any dwelling house which shall be built, maintained or
erected shall be built at least thirty feet back from the front line
of the road, and that no more than one dwelling house shall be built
or maintained on each lot.

2: That no house or structure shall be erected upon said lot which house shall cost less than \$6,000.00.

3: That no junk or other unsightly obstructive material shall ever be stored, kept or maintained on said premises or any part thereof nor shall any cows or pigs be kept on the said premises or any part thereof.

4: The sewage disposal and water supply systems shall be installed or constructed in accordance with the regulations of the New York State Department of Health.

BEING the same premises contained in deed, F. Charles Sorton and Helen M. Sorton, husband and wife, to Myndert Schaaf and Kathleen Schaaf, husband and wife, dated August 31, 1955, recorded September 2, 1955 in Liber 1359 of Deeds at page 489 in the Orange County Clerk's Office, said Myndert Schaaf having died a resident of Orange County, New York on July 14, 1963.

SUBJECT to grants to utility companies as the same appear of record and to such state of facts as an accurate survey will show.

LIBER 1604 PG 182

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the parties of the second part, their heirs and assigns forever, as tenants by the entirety.

And said party of the first part

covenants as follows:

First, That said party of the first part is

seized of said premises in fee simple, and has good right to convey the same;

Second, That the parties of the second part shall quietly enjoy the said premises;

Third, That the said premises are free from incumbrances, except as aforesaid.

Fourth, That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth, That said party of the first part

will forever Warrant the title to said premises.

Sixth, That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

In Presence of

Kathleen SchAAF
KATHLEEN SCHAAF

State of New York
County of ORANGE

ss.

On this 5th day of May
Nineteen Hundred and Sixty-Four
before me, the subscriber, personally appeared KATHLEEN SCHAAF,

Deed

FULL COVENANT WITH LIEN COVENANT

KATHLEEN SCHAAF

TO

ALBERT ROTHSTEIN and
ELEANOR ROTHSTEIN,
his wife

Dated, *May 5* 19 *64*

Orange County Clerk's Office, S.S.

Recorded on the *6th* day
of *May* ... 19*64* at *10:10*
o'clock, ... *A.M.* in Liber ... *1662*
..... *Deeds* ... at page ... *181*.
and Examined.

RE Kottusack
..... Clerk

R & C Cassidy & Hartung
Return to Howard Finkelstein
D. Copans

LEMON & CALLAHAN
ATTORNEYS-AT-LAW
CORNWALL, NEW YORK



NOTARY PUBLIC
JAMES T. HONNELL

Notary Public in the State of New York
My Commission Expires March 30, 1965

to me personally known and known to me to be the same person—described in, and
who executed the within Instrument, and she duly acknowledged
to me that she executed the same.